

Court rebukes Obama administration for failing to act on license application

By: Sarah Hurtubise – August 14, 2013

According to one federal judge, the president is not allowed to do whatever he wants.

The D.C. Circuit Court of Appeals ruled Tuesday that the federal Nuclear Regulatory Commission cannot delay its decision on whether or not to license a nuclear waste storage facility project at Yucca Mountain in Nevada.

The Department of Energy submitted an application to store nuclear waste at Yucca Mountain to the NRC in June 2008. The NRC is statutorily required to issue a decision on the license within three years, but has not done so over five years later.

Instead the NRC has “simply shut down its review and consideration” of the Energy Department’s pending license, according to the decision, amid the Obama administration’s hopes to abandon the project entirely, but the federal court sharply rebuked the President for instructing his administration not to follow the law.

Judge Brett Kavanaugh wrote that “the President must follow statutory mandates so long as there is appropriated money available and the President has no constitutional objection to the statute...[b]ut the President may not decline to follow a statutory mandate or prohibition simply because of policy objections.”

The stinging condemnation may speak to other laws the current administration has failed to act upon in light of accusation that only laws — or parts of laws — the president finds politically palatable have been implemented. Republican National Committee Chairman Reince Priebus said this Sunday that the Affordable Care Act’s employer mandate delay is just a means to prevent Democrats from being attacked over the health care law in the 2014 elections.

The Cato Institute’s director of health policy studies Michael Cannon told The Daily Caller News Foundation that the Yucca Mountain ruling affirms that the administration’s unilateral actions to delay may not be in good faith.

“The ruling affirms that President Obama does not have the authority to waive or delay parts of Obamacare like the employer mandate just because it’s convenient,” Cannon told TheDCNF.

Whether the ruling’s reproach will be applied to other Obama administration initiatives remains to be seen, but its effect on the Department of Energy’s license for the nuclear waste facility in question is still unknown.

Senate Majority Leader Harry Reid told reporters that “with no disrespect to the court, this decision means nothing. Yucca Mountain is an afterthought.”

The Obama administration has argued that the NRC has insufficient funds to complete the review. \$11.1 million remains of congressionally-approved funds for the Commission to complete its work, leading Kavanaugh to order that while the money remains, the NRC is legally required to do its duty and review the Energy Department’s application.

He added, however, that “if Congress determines in the wake of our decision that it will never fund the commission’s licensing process to completion, we would certainly hope that Congress would step in before the current \$11.1 million in expended, so as to avoid wasting taxpayer money.”